

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

SOUTHERN APPALACHIAN  
MOUNTAIN STEWARDS, et al.,

Plaintiffs,

v.

Civil Action No. 2:09cv200

COLONEL DIONYSIOS ANNINOS  
District Engineer, U.S. Army Corps  
of Engineers, Norfolk District, et al.,

Defendants.

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UPDATED STATUS REPORT AND UNOPPOSED MOTION TO EXTEND STAY

The United States Army Corps of Engineers (“Corps”) provides this update to the Status Report filed on June 30, 2010 (Doc. No. 40) and, pursuant to Fed. R. Civ. P. 7, moves for an order to extend the stay of this case that was granted by Order dated July 23, 2010 (Doc. No. 42) for an additional 30 days. This motion is unopposed. The reasons for the motion, are as follows:

1. The Complaint in this case raises a facial challenge to Nationwide Permit No. 21 (NWP 21), a general permit reissued on March 9, 2007 pursuant to § 404(e) of the Clean Water Act (CWA), 33 U.S.C. § 1344(e). 72 Fed. Reg. 11092 (Mar. 12, 2007).

2. The Complaint in this case also raises an as-applied challenge to the NWP 21 verification issued by the U.S. Army Corps of Engineers (“the Corps”) on August 7, 2007 to the A&G Coal Corporation for the Ison Rock Ridge Surface Mine in Wise County, Virginia (the Ison Rock Project).

3. As set forth in the joint status report filed on June 30, 2010, the Corps Headquarters made a final decision to suspend the NWP 21. Suspension of Nationwide 21 (Notices), 74 Fed. Reg. 34712 (June 18, 2010). The suspension applies prospectively to prohibit District Engineers from “continu[ing] to process NWP 21 PCNs [preconstruction notifications] that are pending as of June 18, 2010, or accept[ing] new or revised NWP 21 PCNs . . .” 74 Fed. Reg. 34714.

4. Activities that were verified by the District Engineers prior to June 18, 2010 will continue to be authorized by that NWP until it expires on March 18, 2012, unless modified, suspended or revoked by the District Engineer. District Engineers may not modify previously issued NWP 21 verifications in this region to authorize additional discharges of dredged or fill material into waters of the U.S.

5. As set forth in the status report filed on June 30, 2010, the NWP 21 verification authorizing the Ison Rock project was suspended by the Corps’ District Engineer for the Norfolk District. That NWP 21 verification was subsequently revoked by the District Engineer.

6. In light of the suspension of the NWP 21 and the revocation of the Ison Rock NWP 21 verification, the Plaintiffs and the Corps have discussed resolution of matters at issue in this case. The Plaintiffs have asked the Corps for certain information relating to other Virginia projects verified under NWP 21, solely for the purpose of facilitating resolution of this case.

7. The Corps has obtained preliminary information regarding the status of the projects that had been verified under NWP 21. However, the information has not been confirmed and thus cannot be reported as final status. The Corps expects to have all necessary information



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#### CERTIFICATE OF SERVICE

I hereby certify that, on the 1<sup>st</sup> day of September, 2010, I will electronically file the foregoing Unopposed Motion to Stay with the Clerk of Court using the CM/ECF system, which will then send a notification of electronic filing (NEF) to the following filing user(s):

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